

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES PETTUS,

Plaintiff,

-against-

9:06-CV-0030
(LEK/DRH)

CAPTAIN RICHARDS, Cayuga Correctional
Facility; DONALD SELSKY; THERESA
KNAPP-DAVID; and JOHN & JANE DOES,
Movement & Classification,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on August 28, 2008 by the Honorable David R. Homer, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3 of the Northern District of New York. Report-Rec. (Dkt. No. 40). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Plaintiff Pettus, which were filed on September 9, 2008. Objections (Dkt. No. 41).

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” Id. This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 40) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that Defendants' Motion to dismiss (Dkt. No. 25) is **GRANTED**; and it is further

ORDERED, that the Order granting Pettus IFP status (Dkt. No. 4) is **VACATED**; and it is further

ORDERED, that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED** as to all Defendants and claims unless Plaintiff pays the filing fee of \$250.00 **within thirty (30) days** of the date of this Order; and it is further

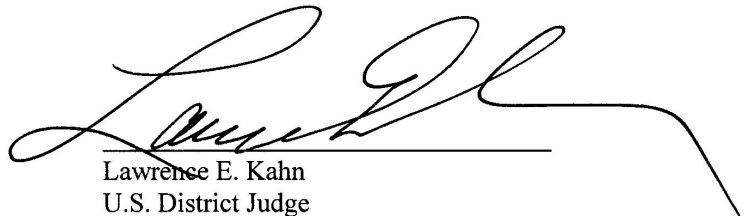
ORDERED, that Plaintiff Pettus is **BARRED** from filing any IFP complaints in this District unless he is under imminent danger of serious physical injury; and it is further

ORDERED, that Pettus' cross-Motion for summary judgment (Dkt. No. 30) is **DENIED** in its entirety without prejudice; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: September 18, 2008
Albany, New York


Lawrence E. Kahn
U.S. District Judge